

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-13-1-5-00332-16
45-004-16-1-5-00447-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-09-235-009.000-004
Assessment Years: 2013 and 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 and 2016 assessments of his property located at 1110 Pyramid Drive in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$8,700 for 2013 and \$4,900 for 2016.
2. Nowacki filed Form 131 petitions with the Board for both years and elected to proceed under our small claims procedures. On July 23, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by Robert Metz and Terrance Durousseau, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner’s Exhibit 1:	2012-2016 Property Record Card for the subject property
Petitioner’s Exhibit 2:	2009-2013 Property Record Card for the subject property
Petitioner’s Exhibit 3:	Aerial view of the subject property
5. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the

Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.¹

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. Here, there was no change in the subject property's assessment from 2012 to 2013, and it decreased from 2015 to 2016. Nowacki therefore bears the burden of proof for both years.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. The subject property is a vacant parcel of land located in a subdivision. Nowacki purchased the property in 2009 for \$484 and he is seeking an assessed value of \$2,400 for both assessment years. Although the parcel is suitable for building, its subdivision has not seen any construction for 25-30 years, and the current market would not support new construction at the site. *Nowacki testimony*.
 - b. Nowacki agrees that the subject property's Property Record Card ("PRC") accurately reflects the neighborhood's characteristics such as topography, utilities, and street and sidewalk improvements. But the PRC lists the neighborhood's life cycle as "other" despite the fact that "the entire city is in a condition of decline." Nowacki contends that the decreasing assessments across the city show that his property's assessment is inaccurate. He also questioned why the PRC lists the subject property's 2016 assessed value as \$7,500 when the PTABOA valued it at \$4,900. *Nowacki testimony; Pet'r Exs. 1, 2*.
9. The Assessor's case:
 - a. The Assessor is unable to explain why the PRC continues to reflect an assessment of \$7,500 for 2016, but the updated value of \$4,900 was transmitted to the Auditor's office. And the Auditor billed Nowacki based on the \$4,900 valuation reflected on the PTABOA's Form 115. *Durousseau testimony; Metz testimony*.

¹ The Assessor offered no exhibits.

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the subject property's 2013 or 2016 assessments. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* For 2013 and 2016, the valuation dates were March 1, 2013 and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki argued the subject property's 2013 and 2016 assessments should be \$2,400, but he failed to present any probative market-based evidence to support that value. Nowacki did offer some general statements about the condition of the subject property's subdivision and a broad assertion that assessments are decreasing across the city, but statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Because Nowacki offered no probative market-based evidence to demonstrate the subject property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. *See Eckerling*, 841 N.E.2d at 678 (stating that to successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use.") Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

- e. We order the Assessor to correct the PRC for 2016 to reflect the assessed value of \$4,900.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the subject property's 2013 and 2016 assessments.

ISSUED: October 19, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.